IN THE

Supreme Court of the United States

October Term, 1906.

ROCKFORD LIFE INSURANCE COMPANY, - Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE.

PETITION FOR A WRIT OF CERTIORARI

TO THE

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

C. E. WELSH,
General Counsel,
WM. MARSHALL BULLITT,
Special Counsel.

LOUISVILLE LAW COMPANY, INCORPORATED, LOUISVILLE, KY.

[References required by Rules 12 and 27]

Opinion below. *Commissioner* v. *Rockford Life Ins. Co.*, 67 F. (2d) 213; R. _____

Jurisdictional authority. Judicial Code §240(a), as amended by Act of February 13, 1925.

Date of Judgment. October 20, 1933 (R. _____).

Nature of the case, rulings, etc. The taxpayer, a life insurance company, did not include in its gross income for 1929 any sum to represent the rental value of its home office building, owned and occupied by it; and it claimed as deductions (1) certain sums for depreciation, taxes and repairs on account of such property, and also (2) depreciation for certain furniture and fixtures.

The Commissioner determined a deficiency in income tax, which the Board of Tax Appeals rejected as contrary to its ruling in *Independent Life Ins. Co.*, 17 B. T. A. 757, and *Lafayette Life Ins. Co.*, 26 B. T. A. 947 (*Rockford Life Ins. Co.*, 27 B. T. A. _____, R. 17), and held that had been an overpayment (*Id.*).

The C. C. A. (7th) *reversed* the B. T. A., and held (1) that the Company must include as a part of its taxable income the rental value of space occupied by it in its own property, in order to entitle it to deductions for taxes, expenses, etc., and also (2) that depreciation for furniture and fixtures could only be allowed on the investment portion of its business (*Commissioner* v. *Rockford Life*, 67 F. (2d) 213).

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Rockford Life Insurance Company petitions for a writ of *certiorari* to review a decision of the C. C. A. (7th Circuit), rendered October 20, 1933, in *Commissioner v. Rockford Life Ins. Co.*, 67 F. (2d) 213, which held:

(1) That §203(b) of the Revenue Act of 1928 (26 U. S. C. A., §2203(b)) was constitutional and

(2) That deductions for depreciation upon furniture and fixtures should be limited to the *investment portion* of the business only.

SHORT STATEMENT OF THE MATTER INVOLVED.

The Commissioner of Internal Revenue determined a deficiency in income tax for 1929, by disallowing (1) certain deductions claimed for depreciation, taxes and repairs on account of a Home Office Building, and (2) certain depreciation for furniture and fixtures (R. 5-8).

The Board of Tax Appeals *reversed* the Commissioner, and decided that the deductions were proper (*Rockford Life Ins. Co.*, 27 B. T. A. ——, R. 16).

The C. C. A. reversed the B. T. A., and sustained the Commissioner (*Commissioner* v. *Rockford Life Ins. Co.*, 67 F. (2d) 213, R. ——).

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The decision of the C. C. A. (7th) below was in *direct conflict* with the decision of the C. C. A. (6th) [*Commissioner* v. *Independent Life Ins. Co.*, 67 F. (2d) 470] and of this Court in *National Life Ins. Co.* v. *U. S.*, 277 U. S. 508.

As conclusive evidence of the existence of such conflict between the C. C. A. of the 6th and 7th Circuits respectively, it is sufficient to point out that the Government has recently filed a petition for *certiorari* (now pending undetermined), in *Commissioner* v. *Independent Life Insurance Co.*, No. 689, October Term, 1933, wherein the reason assigned for the granting of the writ, is such conflict, in the following words (p. 5):

"The decision below is in direct conflict with the decisions of the Circuit Court of Appeals for the Seventh Circuit in *Commissioner* v. *Lafayette Life Insurance Co.*, 67 F. (2d) 209, and *Commissioner* v. *Rockford Life Insurance Co.*, 67 F. (2d) 213."

2. The Government points out additional reasons why a writ of *certiorari* should be granted in the *Independent Life* case [such as the holding by the C. C. A. (6th) that an important provision of the Federal Revenue Laws was unconstitutional, and its important connection with the system of taxing life insurance companies, affecting all life insurance companies which maintain offices in their own buildings, and the various claims for refund, etc.]

3. If, therefore, this Court shall deem it proper to grant a writ of *certiorari* to the Government in the *Independent Life Insurance Company* case, No. 689, October Term, 1933, then for exactly the same reason, it should also grant a writ of *certiorari* in the instant (*Rockford Life Insurance Company*) case, so that the holdings in both the 6th and 7th Circuits, which are in direct conflict, shall both be before this Court at the same time.

In view of the importance of the question, and this direct conflict between the C. C. A. of the 6th and 7th Circuits respectively—and both the Government and the Insurance Companies agree that such direct conflict exists—the *certiorari* should be granted in both the *Independent Life* case and in the *Rockford Life* case.

4. In the *Rockford Life* case, there is one additional question (not involved in the *Independent Life* case), which is not a question of constitutionality but of statutory inter-

pretation. This question, however, involves every life insurance company in the United States, and involves the question whether the allowable depreciation for furniture and fixtures applies to *all* the company's furniture and fixtures, or only such furniture and fixtures as are used in the *investment portion* of the business.

5. Two important constitutional questions are involved, to-wit:

First: Where a taxpayer owns and occupies its own real estate, is the reasonable value of the space so occupied, income which can be taxed by Congress as *income*, or is the taxation thereof really a *direct tax* levied upon the taxpayer's real estate, which cannot be levied without apportionment?

Second: Can Congress, in view of the decision in *National Life Insurance Co v. U. S.*, 277 U. S. 508, allow deductions for taxes, expenses and depreciation on real estate to taxpayers who *do not own* their own buildings, and yet require a taxpayer which *does own* his own building, to consent, in order to obtain the benefit of such deductions, to include within his taxable income the rental value of the space occupied by the taxpayer at his own building, which is in reality a tax on real estate, *i. e.*, a direct tax, without apportionment?

C. K. WELSH,
General Counsel,

WM. MARSHALL BULLITT,
Special Counsel.

12 January 1934.